



**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
087555,853	05/30/96	MCMASTER	GLT-1540-R

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EXAMINER
GRIFFIN, S

ART UNIT	PAPER NUMBER
1303	

DATE MAILED: 08/04/97

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/655,853

Applicant(s)
McMaster et al.

Examiner
Steven P. Griffin

Group Art Unit
1303



☒ Responsive to communication(s) filed on Apr 21, 1997

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-16 and 27 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-16 and 27 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on 4-21-97 and 11-24-97s ☐ approved ☒ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Response to Amendments

1. The amendments to col. 4, line 18, filed 11-24-95, have not been entered because they do not comply with the requirements of 37 C.F.R. § 1.121(e), which sets forth the manner for amending in a reissue application. See MPEP § 1453 for examples on the correct way for making amendments to the specification and claims of a reissue. Note: the deleted matter was not indicated as being bracketed and the newly added material has not been underlined.

2. The amendments to col. 5, line 26, filed 4-21-97, have not been entered because they do not comply with the requirements of 37 C.F.R. § 1.121(e), which sets forth the manner for amending in a reissue application. See MPEP § 1453 for examples on the correct way for making amendments to the specification and claims of a reissue. Note: the deleted matter was not indicated as being bracketed and the newly added material has not been underlined, i.e. the amendment should state that "14" should be replaced by --[14] 22--.

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Drawings

3. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 4-21-97 have been disapproved. The proposed correction is disapproved because it proposes amending the original patent drawings which is not allowed in a reissue application, see MPEP 1413, any changes in the drawings would require the submission of a new figure number to reflect the correction of the original drawing.

4. The approval of the proposed drawing corrections filed 11-24-95 is hereby withdrawn and as such the proposed drawing correction filed 11-24-95 is now disapproved. This proposed correction is now disapproved because it proposes amending the original patent drawings which is not allowed in a reissue application, see MPEP 1413.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "50", "17", "43" (see col. 5, line 63). Correction is required.

Specification

6. The disclosure is objected to because of the following informalities: Column 4, line 18, it is believed that "3" should

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be changed to --[3] 5--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. Claim 27 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 27 has no support for moving or changing the position of a surface of the quench tubes so as to conform to the glass sheet which is intended to be tempered. The glass sheet is either tempered in the flat condition as received, and thus there are no means as specified in claim 27, or the flat sheet is bent using the disclosed apparatus prior to tempering. The sheet must be received by the apparatus in a flat, heated condition for bending prior to tempering of the bent glass sheet in place, i.e. bending is essential for enabling tempering with the apparatus when the platens are in a deformed state. As claim 27 is written there is no indication that the movement of the quench tubes is while the glass sheet is being bent and the glass sheet is between the upper and lower quench tubes during this movement as

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is provided for in the specification as filed, there is no enablement for a stand alone tempering apparatus which moves to conform to the shape of a bent glass sheet.

8. Claims 2-16 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2, line 2, it is suggested that --actuator-- be inserted before "devices", this suggestion is made so as to provide terminology consistency as claims 3 and 5 provides "actuator devices".

Claims 3 and 5, "actuator devices" is not clear if it is referring to the same devices as were referred to as just "devices" in claim 2, see the preceding paragraph for a suggested correction.

Claim 6, line 5, "the lower bending platen" lacks antecedent basis.

Claim 6, line 4, claim 9, lines 2-3, 4 and 7, claim 15, line 26, and claim 16, lines 20-21 and 35, "said upper platen" lacks antecedent basis.

Claim 6, lines 6-7, 9, and 10, claim 7, lines 1-2 and 6, claim 15, line 23, and claim 16, line 31, "the lower platen" lacks antecedent basis.

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Claim 6, lines 7-8, claim 8, lines 1-2 and 5, claim 9, lines 1-2, claim 15, lines 29-30, and claim 16, lines 38-39, "the upper platen" lacks antecedent basis.

Claim 6, line 12, claim 15, line 19, and claim 16, line 27, "said lower platen" lacks antecedent basis.

Claim 7, lines 8-9, claim 11, line 3, claim 15, line 25, and claim 16, lines 33-34, "the bending and quenching" lacks antecedent basis as there is no basis for quenching.

Note: if any changes are made to the claims or specification in order to overcome the above 35 U.S.C. 112 rejections a reissue declaration must be provided which addresses these changes.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claim 1 is rejected under 35 U.S.C. § 102(b) as being anticipated by Bocelli et al 4,540,425 (Bocelli '425).

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Bocelli '425 discloses an apparatus for bending glass sheets comprising a first platen (see the lower portion of the apparatus in Figs. 1-3) which receives glass sheets, includes actuator means which moves portions of the first platen a specific distance to deform the platen, and has openings in nozzles (17) which form a part of the first platen and are movable with the deformation of the first platen, Bocelli '425 also discloses the apparatus as having a second platen (see the upper portion of the apparatus in Figs. 1-6) with nozzles (18) and a means (23, 24) for supplying quench gas to the first and second quench openings.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered

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therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

12. Claim 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Bocelli '425.

Bocelli '425 discloses a template (8 or 9) which is mounted so when the platens deform they contact the template which controls the curvature of the platens and thus the curvature of the glass. It is noted that the template in Bocelli '425 is located below the first platen (see the lower portion of the apparatus in Figs. 1-3) whereas claim 6 claims the template above the upper platen but it is considered that it would have been obvious to one of ordinary skill in the art that locating the template of Bocelli '425 above the platens and thus deforming the platens of Bocelli '425 to contact this template would have been an obvious modification in the location of a known part in order to provide for a way of controlling the shape of the curvature of the glass sheet.

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Reissue Oath/Declaration

13. The reissue oath or declaration filed with this application, including the declaration filed 4-21-97, is defective because it fails to particularly specify the errors relied upon, as required under 37 C.F.R. 9 1.175(a)(5).

The reissue declaration fails to particularly specify every error relied upon, every departure from the original patent represents an "error" in the original patent under 35 U.S.C. 251 and must be particularly and distinctly specified and supported in either the original or a supplemental oath or declaration under 37 CFR 1.175. The declaration should refer to every departure from the original patent, for example the changes to the specification on col. 4, line 51 and the changes to the drawings filed 4-21-97 (particularly the addition of the arrow to Fig. 4), and specify the error relied upon.

14. The reissue oath or declaration filed with this application is defective because it fails to particularly specify the errors and/or how the errors relied upon arose or occurred as required under 37 CFR 1.175(a)(5). Included are inadvertent errors in conduct, i.e., actions taken by the applicant, the attorney or others, before the original patent issued, which are alleged to be the cause of the actual errors in the patent. This includes

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how and when the errors in conduct arose or occurred, as well as how and when these errors were discovered. Applicant's attention is directed to *Hewlett-Packard v. Bausch & Lomb*, 11 USPQ2d 1750, 1758 (Fed. Cir. 1989). The declaration should specifically refer to every error in the patent and specifically explain how the errors arose or occurred, for example, the declaration should refer to each change/amendment such as the amendments to the claims and provide a specific explanation of how and when these errors arose, this is necessary so the Office can adequately evaluate that the errors arose without deceptive intent. The general statements that the errors arose "through error in the transcription of the application" and/or "through inadvertent error in drafting and proofreading the application" which is provided in the declaration filed 4-21-97 should be more specific as to how the error occurred and when the error occurred.

15. The reissue oath or declaration filed 5-30-96 is defective because it is unsigned and as such is considered to lack compliance with 37 CFR 1.175(a).

16. Claims 1-16 and 27 are rejected as being based upon a defective reissue oath/declaration under 35 U.S.C. § 251. See 37 C.F.R. 1.175.

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Every departure from the original patent represents an "error" in the original patent under 35 U.S.C. 251 and must be particularly and distinctly specified and supported in either the original or a supplemental oath or declaration under 37 CFR 1.175. Any subsequent changes in the specification or claims require an updated supplemental oath or declaration specifically directed to and supporting these changes. As set forth in the previous office actions, the reissue oath or declaration must particularly specify (1) the excess or insufficiency in the claims and (2) how the reissue overcomes the defect in the original patent, e.g. describe how the newly presented or amended claims differ from those of the original patent. The reissue declarations of record do not address, in the above manner, all the changes from the patent. The reissue declarations of record do not point out very specifically what the defects are and how and when the errors arose, and how and when errors were discovered. Further, as set forth previously, failure to omit a limitation is not "error", where the claims can only be enabled with the limitation present. The disclosed apparatus is for bending the flat glass sheet followed by tempering of the bent glass sheet. The sheet must be received by the apparatus in a flat, heated condition for bending by changing the contour of the platens prior to tempering of the bent glass

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sheet in place, i.e. bending is essential for enabling tempering of a bent glass sheet with the platens contoured according to the bending step. Claims directed to an invention different from that of the patent are not proper for the filing of a reissue application; see MPEP 1412.01 and 1450. Claim 27 is not directed to the bending and tempering apparatus of the patent claims. Applicant is trying to now add different inventions to the patent by way of reissue which is totally inappropriate. These claims are rejected under 35 USC 251 as not being directed to error and not being for the invention in the original patent.

Response to Arguments

17. Applicant's arguments filed 4-21-97 have been fully considered but they are not deemed to be persuasive. Regarding the arguments pertaining to the 35 USC § 112, first paragraph rejection of the subject matter of claim 27, it is argued that adequate support is provided in the specification and that the specification describes a quench which solves recognized problems of uniform quenching of bent glass sheets in prior quenches; the argument particularly refers to col. 2, lines 38-42. It is considered that this argument is not deemed persuasive and that col. 2, lines 38-42 fails to provide for claiming an

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apparatus for uniformly tempering a glass sheet as in claim 27 as lines 38-42 and the rest of the specification fail to provide for enablement for a stand alone tempering apparatus as is now claimed and is discussed above. It is argued that "actuator devices" is provided for in the claims and thus does not render the claim indefinite. This is not persuasive as it is still considered that "actuator devices" in claims 3 and 5 is not clear if it is referring to the same devices as are referred to in claim 2 as no nexus is provided between claim 2 and claims 3 and 5 which would clarify that they are referring to the same element. The argument regarding "upper platen" and "lower platen" is not persuasive as it is considered that "upper platen" and "lower platen" clearly lack antecedent basis in the claims and as such are not clear as to what they are referring to. The argument regarding "the bending and quenching" is not persuasive as it is still considered that there is no basis in the claims for the quenching of the glass sheet as no recitation of quenching of the glass sheet has been provided. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., Bocelli not suggesting any movement of the rolls to a different shape while glass is being processed therebetween and Bocelli for disclosing an apparatus

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for bending a glass sheet about an axis of curvature that is transverse to the direction of conveyance) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations and suggests from the specification are not read into the claims. *In re Van Guens*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The argument that applicant's claimed quench of claim 27 is not directed to an invention different from that of the patent is not persuasive as it is considered still considered that the invention of claim 27 is a different invention from the invention of the patent and it is considered that there is the disclosure of the original patent fails to provide any evidence that applicant intended to claim or that the applicant considered the material now claimed in claim 27 to be his or her invention; see MPEP 1412.01 and 1450.

18. The argument regarding the word "platen" in claim 15 is deemed persuasive and the rejection is withdrawn.

19. The argument that Cheron does not disclose or suggest means connected to the movable quench tubes for movably engaging the glass sheet as in claim 27 is persuasive and the 102(b) rejection of claim 27 over Cheron is withdrawn.

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Conclusion

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for response to this final action is set to expire THREE MONTHS from the date of this action. In the event a first response is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than SIX MONTHS from the date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven P. Griffin whose telephone number is (703) 308-1164. The examiner can normally be reached on Monday-Thursday from 6:30 AM-4:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Czaja, can be reached on (703) 308-3852. The fax phone numbers for this Group are (703) 305-7115, 7718, or 7719.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.

Steven P. Griffin
STEVEN P. GRIFFIN
PRIMARY EXAMINER
ART UNIT 1303
7-31-97

SPG
July 31, 1997